LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
APR 8 1965

No. 937

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

BROTHERHOOD OF RAILROAD TRAINMEN, et al.,
Petitioners

v.

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY,
Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

---

BRIEF OF PETITIONERS IN REPLY TO THE BRIEF FOR THE RESPONDENT IN OPPOSITION

EDWARD J. HICKEY, JR.
JAMES L. HIGHSAW, JR.
620 Tower Building
Washington, D. C. 20005
Counsel for Petitioners

Of Counsel:

HOLLAND & HOLLAND
2007 Security Life Building
Denver, Colorado

MULHOLLAND, HICKEY & LATHAM
620 Tower Building
Washington, D. C. 20005

April, 1965

Byron S. Adams Printing, Washington, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 847

BROTHERHOOD OF RAILROAD TRAINMEN, et al.,
Petitioners

v.

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

---

BRIEF OF PETITIONERS IN REPLY TO THE BRIEF FOR THE RESPONDENT IN OPPOSITION

Now come the petitioners in the above-entitled cause to reply to the brief of the respondent The Denver and Rio Grande Western Railroad Company in opposition to the petition for a writ of certiorari.

Respondent's sole argument in opposition to the petition is that the Court of Appeals correctly held that the National Railroad Adjustment Board is limited by

common-law principles governing the award of damages in sustaining monetary claims of railroad employees in situations where a carrier has violated a collective bargaining agreement governing the rates of pay, rules, and working conditions of the employees involved. However, the present case involves the first instance in which a Court of Appeals has laid down such a sweeping limitation upon the statutory authority of the Adjustment Board.[1] Respondent's brief completely ignores the importance of the issues presented with respect to the authority of the Adjustment Board and that agency's ability to rectify and prevent violations of collective bargaining agreements. It also ignores the inconsistency between the decision below and this Court's holdings that Section 3 of the Railway Labor Act establishes a unique system of compulsory arbitration and that rights under collective bargaining agreements are not to be determined upon the basis of principles of law governing ordinary contracts. These are all factors giving rise to a situation requiring a review by this Court of the judgment below.

This Court only recently recognized the importance of and the need to review decisions of lower Federal courts restricting the jurisdiction and functions of the National Railroad Adjustment Board when it granted the petition for certiorari in *Gunther* v. *San Diego and Arizona Eastern Railway Company* (Case No. 733, petition for certiorari granted March 1, 1965). The decision of the Court of Appeals for which review is

[1] Respondent cites (page 14) only two District Court decisions involving suits to enforce Adjustment Board awards in support of its position. In neither one of these (*Hanson* v. *C & O* and *Cook* v. *Des Moines Union Ry.*) was the issue here involved squarely presented and passed upon. Respondent simply relies upon language in the two decisions.

here sought is even more sweeping in its effect upon the authority of the Adjustment Board and rights of employees than was the decision below in the *Gunther* case. Already railroads are taking advantage of this decision to contend to the Adjustment Board that they are relieved of financial obligations to employees even though they may have deliberately violated a collective bargaining agreement and instructions have begun to be issued by railroads to their labor relations departments to apply the decision below in all of their dealings with employees. This situation urgently calls for review by this Court of the decision below limiting the authority of the National Railroad Adjustment Board.

Respectfully submitted,

EDWARD J. HICKEY, JR.
JAMES L. HIGHSAW, JR.
620 Tower Building
Washington, D. C. 20005
Counsel for Petitioners

Of Counsel:

HORNBEIN & HORNBEIN
2007 Security Life Building
Denver, Colorado

MULHOLLAND, HICKEY & LYMAN
620 Tower Building
Washington, D. C. 20005

April, 1965